EXPLANATION OF

24

فروع الفقه

Ibn al-Mibrad

Shaykh Ahmad Musā Jibrīl

May Allāh (سبحانه وتعالى) ease the affairs of the Shaykh, preserve him, love him, and safeguard him from all harm. May He (سبحانه وتعالى) keep him sincere, and continue to shower his life and Da'wah with His blessings, and allow the Muslims to benefit from his da'wah until the Day of Judgement. May Allāh make all his efforts weigh heavy on his scales, and make it an immense Sadaqah Jāriyah for him, his parents, and his family. May Allāh facilitate the completion of this Sharh and shower him with His aid always and forever.

SH_AHMAD_JIBRIL

SH_AHMAD_JIBRIL

T.ME/AHMAD_MUSA_JIBRIL

SHAYKH AHMAD MUSĀ JIBRĪL

SHAYKH AHMAD MUSĀ JIBRĪL

بسم الله الرحمن الرحيم

الحمد لله رب العالمين، والعاقبة للمتقين، والصلاة والسلام على عبده ورسوله وخليله وصفوته من خلقه، نبينا وإمامنا وسيدنا محمد، وعلى آله واصحابه ومن سلك سبيله واهتدى بهداه الى يوم الدين، اما بعد:

Recap

We're continuing with the nullifiers of Wudū' and the author said,

والنواقض في الطهارة الصغرى ثمانية

There are 8 nullifiers of Wudū'. The first one is الخارج من السبيلين, anything exiting from the two private parts, that's the first nullifier of Wudū'. The second nullifier of Wudū' is والفاحش من غيرهما, what exits from other than the private parts that's repulsive. The third one is وزوال العقل بغير نوم يسير جالسا أو قائما — the author said loss of consciousness nullifies Wudū', and similar to it ruling-wise is sleep, with the exception of light sleep while a person is standing or sitting. We mentioned the summarized, overall, brief ruling on this matter for the laymen and then we mentioned the detailed disputes for Tullāb Al-'Ilm because it is a very common, widespread matter. The fourth nullifier of Wudū' that the author mentions is

ومس الفرج

Touching the private parts, and today it's only focused on a male touching his penis.

I. This Mas'alah can be broken down and summarized into five opinions. Two of them are the obvious two, touching the private part does not nullify the Wudū', then the next one is touching the private part nullifies the Wudū', and I'll include within that the Shāfi'īyyah's opinion. It's the same opinion except that they stipulated with the palm only. That can be made a separate opinion, or it can be included under that, and I'll include it under that opinion inshā'Allāh. Then there are three more remaining opinions that attempted to consolidate between what appears to be conflicting Ahādīth on this matter. Those are the opinions that it's touching with desire, or that it's touching it purposely, or that its Mustahabb and not a Wājib to make Wudū' — for a total of five opinions.

    - So, let's start with the first opinion. The first opinion is that touching the private part does not nullify the Wudū' at all — unconditionally — and that is the opinion of the Hanafiyyah and the Mālikiyyah. Some of the Sahābah who chose this is 'Ali Ibn Abi Tālib, 'Abdullāh Ibn Mas'ūd and Ibn 'Abbās and 'Ammār Ibn Yāsir, among others. And some of the Tābi'īn that it's attributed to is Ibn Al-Mundhir and Rabī'ah and Sufyān Ath-Thawri.

Their proof centers around the Hadīth that we will refer to as Hadīth Talq Ibn 'Ali Al-Hanafi or Hadīth Talq or Hadīth Qays Ibn Talq (his son), and it's the Hadīth wherein the Messenger (ﷺ) was asked about a man touching his private part and whether it invalidates Wudū', and he (ﷺ) said:

لَا، إِنَّمَا هُوَ بَضْعَةٌ مِنْكَ

or

هَلْ هُوَ إِلاَّ مُضْغَةٌ مِنْهُ؟

or

لَيْسَ فِيهِ وُضُوءٌ إِنَّمَا هُوَ مِنْكَ

The Messenger (ﷺ) was asked about a person who touched his private part. He said it doesn't require Wudū' because its بَضْعَةٌ مِنْكَ, it's part of your body, a normal part of your body. Meaning, it's like your leg and hand, you don't make Wudū' from that so you don't have to make Wudū' from touching your private part. That Hadīth is considered weak by Ash-Shāfi'ī and Ibn Al-Jawzi and Abu Hātim and Al-Bayhaqi and Ad-Dāraqutni and Abu Zur'ā, among others. And this opinion also used other weak narrations. They also argued and they said that the origin when one performs his Tahārah is that his Tahārah is established and remains intact and it doesn't become nullified unless there is clear proof of a nullifier, not just some doubts and here there is no proof of a nullifier, meaning pertaining to touching the private part.

They also used a rationale from a discussion or a mini debate on this matter between Sufyān and Ibn Jurayj رحمهم الله. Sufyān said there is no Wudū' for one who touches his private part, he doesn't have to make Wudū'. Ibn Jurayj said he must make Wudū'. Sufyān asked Ibn Jurayj, if someone has semen (Maniy) on his hand, what does he have to do? Ibn Juryj said he just has to wash his hand. Sufyān said, "What's worse or bigger? Semen on the hand or touching the private part?" Ibn Jurayj said, "That's from the Shaytān." The argument that this opinion is using, is what Sufyān mentioned. What Sufyān رحمه الله تعالى is saying is that he was performing Qiyās (analogy) by saying if one doesn't need to make Wudū' from semen on the hand, which is mightier, then he doesn't need to make Wudū' from merely touching the private part which is less. Al-Bayhaqi commenting on this said, what Ibn Jurayj meant when he said, "That's from the Shaytān", is that the rationale (the Qiyās or the analogy) Sufyān used while there is proof on this matter, is from the Shaytān. Meaning, you don't resort to Qiyās when there is proof.

Another argument that this opinion makes is that touching the private part is something very common, very widespread, it happens frequently. It cannot be accepted through Ahādīth Al-Ahād, it must be through Ahādīth Mutawātirah. This goes back to a much broader issue, and it's the issue of whether we accept Ahādīth Al-Ahād on such matters. And the Ahādīth Al-Ahād is a Hadīth that reached us from one or a few narrators, meaning it reached us through a small number of narrators — a small number that's

not enough to make it impossible for the narrators to have conspired in a lie. You'll understand it better when I tell you the opposite of that which is Ahādīth Mutawātirah. The Hadīth that is considered Hadīth Al-Mutawātir is a Hadīth that is reported by a large number of narrators to the point it wouldn't be expected that they could have conspired and got together and agreed to make a lie. They said this matter of touching the private part is so common and widespread that it can't be established through Ahādīth Al-Ahād, it has to be established through Ahādīth that are Mutawātir, and here you're trying to establish it through Ahādīth that are Ahād.

Like I said, this goes back to a much broader issue that's discussed in Usūl on whether we use Ahādīth Al-Ahād on such matters, and the simple answer — the basic, short, summarized answer — is that Ahādīth Al-Ahād that are authentic are used in matters like this and even in bigger matters than this. One of the most popular Hadīth that is from Ahādīth Al-Ahād is the Hadīth that we all know and we all memorized it.

إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ

"Deeds are judged according to the intentions." Each stage of the chain of narrators in the Hadīth إِنَّمَا الْأَعْمَالُ بِالنِّيَّاتِ, from 'Umar Ibn Al-Khattāb all the way down, is classified as Ahād. And bigger than that is that the Messenger (ﷺ) sent individual Sahābah to convey the Deen of Allāh. He sent them through writing or other means, and it was enough proof to be a Hujjah

upon the people they conveyed to. Dividing the Hadīth into Ahād and Mutawātir wasn't known by very early Imāms of Hadīth. If the Ahādīth that were transmitted by individuals or are labelled as Ahād (by small number of individuals), if they can't be used as proof, why would the Messenger (ﷺ) send individuals like Mu'ādh Ibn Jabal and Abu Mūsā Al-Ash'ari رضي الله عنهم to convey the Deen of Allāh? And they weren't going to teach and convey a Hadīth or two but the entire Deen of Allāh سبحانه وتعالى.

Allāh سبحانه وتعالى said,

فَلَوْلَا نَفَرَ مِن كُلِّ فِرْقَةٍ مِّنْهُمْ طَآئِفَةٌ لِّيَتَفَقَّهُواْ فِى ٱلدِّينِ وَلِيُنذِرُواْ قَوْمَهُمْ إِذَا رَجَعُوٓاْ إِلَيْهِمْ لَعَلَّهُمْ يَحْذَرُونَ

It is not for the believers to all go and fight in the battle at once. "From every division of them a group shall stay back to gain knowledge and understand the Deen of Allāh and then go teach and warn the people when they return to them." That verse is referring to individuals — طَآئِفَةٌ (a small number of people) — conveying Islām. That falls under what they claim is Ahād. It's a small number conveying Islam. Allāh سبحانه وتعالى would not have encouraged something that would be fruitless and a waste of time and effort by saying let a small group learn and convey Islām. Allāh ordered and encouraged a group to obtain knowledge and warn their

people when they return to them. The term used is طَآئِفَةٌ and that would fall under what they define as Ahād.

Another argument this opinion made is, some of them who adopted this opinion (of not requiring Wudū' from touching the private part), one of the arguments is they said we can take Ahādīth that require Wudū' from touching the private part (which we'll mention insha'Allāh in the next opinion) and we'll take it with the Hadīth of Talq Ibn 'Ali that doesn't require Wudū', and we'll consolidate between them by stating that the meaning of Wudū' is just washing the hands. With that you can consolidate between what appears to be conflicting Ahādīth on this matter. The answer to that is that you cannot divert the 'Ibādah meaning of Wudū' in the Ahādīth to washing hands only without clear, authentic proof that indicates so. The clear 'Ibādah meaning of the term Wudū' should be the 'Ibādah of Wudū' that we know, unless there is something clear, authentic that diverts it, and here, there is nothing to divert the meaning of Wudū' from the 'Ibādah definition to just merely washing hands. Hadīth Talq Ibn 'Ali Al-Hanafi or Hadīth Qays, as we mentioned, the Hadīth that they attempted to use to consolidate between the Ahādīth isn't even authentic. You don't resort — and you'll hear this over and over — you don't resort to consolidating between the meanings of what appears to be conflicting Ahādīth unless they're both authentic. Here Hadīth Qays is not authentic. That's the first opinion that Wudū' is not required from touching the private part.

- The second opinion, the opposite of this (first) opinion is that touching the private part nullifies Wudū'. That's the opinion of Mālikiyah and Hanābilah and Shāfi'īyyah, but Shāfi'īyyah stipulated that its touching with the internal part of the hand only, meaning with the palm only. And since it's very close to this opinion, I included it within it rather than making the Shāfi'īyyah a separate, independent opinion by itself. Some of the Sahābah who adopted this are 'Umar Ibn Al-Khattāb and his son and Abu Hurayrah, and it's attributed to Ā'ishah and Jābir and Sa'd Ibn Abi Waqqās رضي الله عنهم Some of the Tābi'īn and Ulamā' is 'Atā and Tāwūs and Sa'īd Ibn Al-Musayyib and Ikrimah and, of course, Ibn Jurayj. The proof that they used is Hadīth Busra Ibn Safwān. Hadīth Busra Bin Safwān in Muwatta Mālik that the Messenger (ﷺ) said,

من مسَّ ذكرَه، فلا يصلي حتى يتوضأَ

"Whoever touches his private part should not perform Salāh until he makes Wudū'." Yahyā Ibn Mā'īn and Ahmad Ibn Hanbal and Al-Bukhāri stated, in one way or another, that this is the most authentic Hadīth on the issue of touching the private parts. Ad-Dārimi and others authenticated it. There are various narrations of the Hadīth with similar meanings.

In response to those who distinguish between touching with the external part of the hand and the palm is the Shāfi'īyyah, or some of the Shāfi'īyyah, Ibn Hajr responded to them, and he said — actually he quoted — Ibn

Hazm. Ibn Hajr said, "Ibn Hazm said it includes both the external and palm of the hand and there is no difference between them." Then Ibn Hajr supported by mentioning or referencing the verse,

وَٱلسَّارِقُ وَٱلسَّارِقَةُ فَٱقْطَعُوٓاْ أَيْدِيَهُمَا

The verse on cutting the hand when someone steals, it refers to the entire hand. When you say hand, it's the entire hand because the hand is cut from the wrist. The hand is cut from the wrist, that's the entire hand. So, anything of that touching the private part nullifies Wudū'.

- Then we have three more opinions. The third opinion is that touching the private part nullifies the Wudū' if he touches it with desire. This was an attempt to consolidate between proofs that appear to be conflicting. They said we can combine between the Ahādīth that ordered Wudū' from touching the private part and the ones that say you don't need to make Wudū' by saying it's when one touches it with desire. This is the opinion of some of the Mālikiyyah. They said without touching the private part in desire, it's like any other body part. And they used the Hadīth that we took,

إِنَّمَا هُوَ بَضْعَةٌ مِنْكَ

It's like any part. So long as it's not with desire, it's like touching any part of your body. They said what distinguishes it from other parts, is touching it with desire, because it may be a cause for discharge. It's something that's similar to what we mentioned when we talked about sleep. It (sleep) is not a nullifier in and of itself, but because it may be a cause for the discharge of wind without one knowing it. Here, they said touching is not a nullifier in and of itself, but rather because touching in desire may cause discharge which may nullify Wudū' without one knowing it, just like sleep and the discharge of wind. They also added that Hadīth إِنَّمَا هُوَ بَضْعَةٌ مِنْكَ (in the first opinion). They said that Hadīth was in the context of a person being in Salāh. And they said when one is in Salāh, he is far from touching his private part in desire because he is occupied in 'Ibādah and in Dhikr and focused on his Salāh.

The answer to all that is that is, first of all, Hadīth Talq is a weak Hadīth, as we mentioned. Number two, even if it wasn't weak, adding the stipulation of desire to touching the private part in nullifying Wudū' is not backed by proof, because even Hadīth Talq (إِنَّمَا هُوَ بَضْعَةٌ مِنْكَ), it doesn't mention the stipulation of touching with desire, nor is that even mentioned in Hadīth Busra. That's the third opinion.

- The fourth opinion is that if one touches his private part purposely, it nullifies Wudū', otherwise it doesn't. And this is another opinion within the Mālikiyyah Madhhab and it is chosen by Ibn 'Abd Al-Barr and they used the proof,

وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَآ أَخْطَأْتُم بِهِۦ وَلَٰكِن مَّا تَعَمَّدَتْ قُلُوبُكُمْ

"There is no sin or fault on you if you make a mistake except if your heart deliberately intends to do so." They said the verse shows that forgetting or mistake doesn't nullify Wudū'.

The response to that is what Ibn Qudāmah and Al-Awzā'i said. They said the Ahādīth that state touching the private part nullifies Wudū' are broad and they don't mention purposely or mistakenly. Number two, we respond to them that the verse they use, "there is no sin upon you", no sin doesn't mean that the Tahārah does not get nullified. Those are two completely different issues. You don't get sins, that's one thing, but it doesn't mean that the Tahārah does not get nullified. A third way to respond to this opinion is you don't distinguish between purposely or unintentionally in this matter. If you say purposely touching the private part nullifies Wudū' while accidentally [touching] doesn't, then why don't you say the same about all the other nullifiers Wudū', like one who discharges wind or urinates? Why not add the stipulation of purposely urinating or discharging wind and unintentionally doing so? The argument is inconsistent when you apply it only to touching the private part but not to other nullifiers of Wudū'.

- The fifth opinion, the final opinion, is that its Mustahabb to make Wudū' from touching the private part. It's not a must, but it's a Mustahabb. This

opinion is inferred from an opinion of the Mālikiyyah that states that one who touches his private part must make Wudū' if he didn't make the Salāh yet. They said if he made the Salāh, he should repeat the Salāh so long as the timing of the Salāh didn't lapse. Then they said, if the time of the Salāh lapsed and it passed, there is no need to repeat the Salāh. Based on that, some Ulamā' extracted or inferred that this opinion is basically saying that Wudū' from touching the private part is Mustahabb (it's Sunnah), it's not a nullifier. It's not Wājib to make Wudū'. Why did they infer from that? Because they said, if it was Wājib, they would make him repeat the Salāh whether the timing passed or not. The fact that they only say repeating so long as the time of the Salāh didn't lapse implies they think its Mustahabb or Sunnah to do Wudū', not a requirement.

This, like I said, is the opinion of some of the Mālikiyyah. Ibn Taymiyyah رحمه الله تعالى also chose that Wudū' from touching the private part is only Mustahabb. Their proof for saying it's Mustahabb is an attempt to consolidate between Ahādīth requiring Wudū' from touching the private part and those not requiring Wudū' by just saying the way out of it is saying it's Mustahabb.

The response is, resorting to consolidating between proofs that appear to be contradicting is only when they are authentic, not when one of them is weak. When a Hadīth is authentic and another is weak, you don't resort to consolidating between them, rather you go by the authentic Hadīth.

Ar-Rājih

So, Ar-Rājih is that Wudū' is nullified by touching the private part. The only stipulation would be touching it without a barrier. The reason for that is what's mentioned in a narration in a Hadīth by Abu Hurayrah in Musnad Ahmad and Tabarāni:

إذا أفضى أحدُكم بيدِه إلى فرجِه، ليس دونها حجابٌ، فقد وجب عليه الوضوءُ

"If one touches with his hand his private part, without a barrier, then he must make Wudū'." So this Hadīth stipulated or required Wudū' when touching the private part without a barrier. This Hadīth alone may be weak, but combined with Hadīth Busra, it may gain strength. However, the stipulation is actually strengthened by the linguistic meaning of touching, just as Ibn Hazm and others said, that touching over the thobe is not really considered touching.

والماس على الثوب ليس ماسا

Keep in mind, this Mas'alah that we went over of touching the private part, I kept repeating "touching the private part", and what we mean is a male touching his penis. We'll conclude with that inshā'Allāh and next week we'll start with a woman touching her sexual organ.

And a simple note, repeating "touching the private" part instead of clearly mentioning, for example, penis, over and over again — there is nothing wrong with either way. However, in honor to the class that we mention the name of Allāh in it, سبحانه وتعالى, and we mention the Messenger (ﷺ), and the angels inshā'Allāh are surrounding us, we should choose the best of the various ways or terminologies to get the point across. If it can be mentioned clearly by hinting, then that's even better. That's actually referred to as euphemism and that's actually used in the Qur'ān.

وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم